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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,053	07/07/2003	Itshak Carmona	063170.6813	8048
5073	7590	12/18/2007	EXAMINER	
BAKER BOTTS L.L.P.			REVAK, CHRISTOPHER A	
2001 ROSS AVENUE				
SUITE 600				
DALLAS, TX 75201-2980				
			ART UNIT	PAPER NUMBER
			2131	
			NOTIFICATION DATE	DELIVERY MODE
			12/18/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptomail1@bakerbotts.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/615,053	<b>Applicant(s)</b> CARMONA, ITSHAK	
	<b>Examiner</b> Christopher A. Revak	<b>Art Unit</b> 2131	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 April 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>12/11/07</u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____   |

## DETAILED ACTION

### *Response to Arguments*

1. The objection to the specification is hereby withdrawn in light of the amendment.
2. The examiner hereby withdraws the rejection under 35 USC 112 2<sup>nd</sup> paragraph.
3. Applicant's arguments filed have been fully considered but they are not persuasive.
4. The examiner has carefully considered the applicant's remarks pertaining to the rejection under 35 USC 101 as per claiming non-statutory subject matter. The applicant's interpretation of the Official Gazette Notice of November 22, 2005, Annex IV(c) is indeed correct, however it is the of the position taken in the Guidelines that a claimed signal is ineligible for patent prosecution because it fails to fall under any one of the four statutory subclasses of Section 101 in the Official Gazette, Annex IV(c). The applicant's specification fails to further limit the transmission media as any type of tangible, hardware components, therefore the examiner maintains the rejection.
5. Applicant's arguments filed have been fully considered but they are not persuasive. The applicant has argued that the teachings of Togawa fail to disclose of "scanning the computer system for malicious code based on the determined operating system" and "identifying a type of the computer virus under operation environment of the operating system by the operating system fetching and starting up step"
6. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically

pointing out how the language of the claims patentably distinguishes them from the references.

7. The examiner disagrees with the applicant's assertion. The teachings of Togawa disclose of obtaining an operating system from the outside and identifying a type of computer virus under an operational environment of an operation system, column 4, lines 46-54. It is taught by Togawa that a DOS operating system is one type of operating system used by the prior art teachings, see column 3, lines 3-6 and it is inherent that it is determined which type of operating system is used since it is known which operating system is to be used by the system during the fetching step

8. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., identifying a type of the computer virus under operation environment of the operating system by the operating system fetching and starting up step) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

***Claim Rejections - 35 USC § 101***

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 19-27 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims recite of a "computer data signal

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embodied in a transmission medium" which is software alone, and of itself, and does not constitute statutory subject matter.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Togawa, U.S. Patent 6,240,530.

As per claim 1, it is taught by Togawa of a method for detecting and removing malicious code from a computer system, comprising determining an operating system of the computer system; scanning the computer system for malicious code based on the determined operating system; and detecting the malicious code (col. 4, lines 24-66).

As per claims 2, 11, 20, and 29, it is disclosed by Togawa of removing the malicious code from the computer system (col. 4, lines 24-26).

As per claims 3, 12, 21, and 30, Togawa teaches of displaying a message to a user identifying the malicious code (as shown in Figure 12).

As per claims 4,13,22, and 31, Togawa discloses of displaying a message to a user indicating the presence of malicious code in the computer system (as shown in Figure 12).

As per claims 5,14,23, and 32 it is taught by Togawa wherein the removing step further comprises retrieving from a data file, information relating to the detected malicious code, including at least one command for restoring the computer system to a state that existed prior to modification by the malicious code and executing the at least one command for restoring the computer system to substantially a state that existed prior to modification by the malicious code (col. 4, lines 24-66).

As per claims 6,15,24, and 33, it is disclosed by Togawa wherein the data file is retrieved based on a command from the user (col. 4, lines 24-66 and as shown in Figure 12).

As per claims 7,16,25, and 34, Togawa teaches wherein the scanning step further comprises scanning a memory of the computer system in accordance with a memory layout associated with the determined operating system (col. 4, lines 24-66).

As per claims 8,17,26, and 35, Togawa discloses wherein the scanning step comprises dividing memory locations of the computer system into a plurality of memory blocks and scanning predetermined memory blocks in accordance with the determined operating system (as shown in Figure 13).

As per claims 9,18,27, and 36, it is taught by Togawa wherein selected memory blocks are not scanned in accordance with the determined operating system (as shown in Figure 13).

As per claim 10, it is disclosed by Togawa of a storage medium including computer executable code for detecting and removing malicious code from a computer system, comprising code for determining an operating system of the computer system; code for scanning the computer system for malicious code based on the determined operating system; and code for detecting the malicious code (col. 4, lines 24-66).

As per claim 19, Togawa teaches of a computer data signal embodied in a transmission medium and including computer executable instructions for detecting and removing malicious code from a computer system, comprising a data signal portion for determining an operating system of the computer system; a data signal portion for scanning the computer system for malicious code based on the determined operating system; and a data signal portion for detecting the malicious code (col. 4, lines 24-66).

As per claim 28, Togawa discloses of a system for detecting and removing malicious code from a computer system, comprising an identifying device adapted to determine an operating system of the computer system; a scanning device adapted to scan the computer system for malicious code based on the determined operating system; and a code identifying device adapted to detect the malicious code (col. 4, lines 24-66).

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher A. Revak whose telephone number is 571-272-3794. The examiner can normally be reached on Monday-Friday, 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CR

  
June 10, 2007

CHRISTOPHER REVAK  
PRIMARY EXAMINER

